

DECLARATION OF EMERGENCY

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS CORRECTIONS SERVICES

Offender Incentive Pay and Other Wage Compensation (LAC 22:I.331)

In accordance with the provisions of R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an emergency rule for implementation of the amendment of an existing Department Regulation No. B-09-001 "Offender Incentive Pay and Other Wage Compensation", is necessary. A change in the incentive pay grades for the offender job classifications which are professional level jobs has been undertaken. Incentive pay was increased for educational tutors, ministers and sign language interpreters. A pay increase for the inmate counsel substitutes was delayed due to the size of the affected class of offenders and budget cuts. This delay has negatively impacted recruitment and retention of offenders as inmate counsel substitutes as they often qualify for the other professional level jobs where they can earn a higher rate of pay. The amendment of Department Regulation No. B-09-001 will balance the inequities in the pay scales and allow for the continuation of the nationally acclaimed Inmate Counsel Substitute Program.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of an emergency rule for implementation of Department Regulation No. B-09-001 "Offender Incentive Pay and Other Wage Compensation", is necessary and hereby provides notice of its declaration of emergency effective April 13, 2015, in accordance with R.S. 49:953. This Emergency Rule shall be in effect for 120 days or until adoption of the final rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§331. Offender Incentive Pay and Other Wage Compensation

A. Purpose – to state the Secretary's policy regarding payment of incentive wages and other wage compensations to offenders.

B. Applicability – deputy secretary, undersecretary, chief of operations, director of prison enterprises, regional wardens and wardens. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that compensation shall be paid, in accordance with the provisions of this regulation, to all offenders who have served at least three years of their sentence in the physical custody of the department and who have performed satisfactory work in the job assignment in which they have been classified (except those offenders who opt to receive good time in lieu of incentive wages in accordance with R.S. 15:571.3).

D. Procedures:

1. An offender sentenced or resentenced or who is returning to the physical custody of the department on or after September 20, 2008, who is not eligible to earn good time at any rate shall serve three years from the date of reception before becoming eligible to earn incentive pay.

a. Grandfather Clause: The provisions of this section are applicable to offenders received at the reception and diagnostic centers on or after September 20, 2008. Offenders received at a reception and diagnostic center prior to this date shall be subject to the waiting period previously in effect for this regulation. Offenders who are currently receiving

incentive pay will not be affected and will continue to be eligible to receive incentive pay as they did on the effective date of this regulation but shall be subject to the provisions of section D.2. as it applies to job changes.

2. An offender sentenced or re-sentenced or who is returning to the physical custody of the department on or after September 20, 2008, who is eligible to earn good time at any rate shall not be eligible to earn incentive wages.

a. Grandfather Clause: Offenders currently earning good time at a rate of three days for every 17 days served in accordance with Act 1099 of the 1995 regular session who are also earning incentive pay shall be allowed to continue to earn incentive pay at authorized rates.

3. Once eligible to earn incentive pay, each offender shall initially be paid an "introductory pay level" of two cents per hour for a period of six months. After six months, the offender shall be paid at the lowest pay rate that is commensurate with the job assignment he is placed in by the institution. In the event of a change in an offender's job assignment or custody status, the offender's rate of compensation shall automatically be adjusted to the lowest pay rate of the assigned job. If a change in job assignment is not for disciplinary reasons, the Warden may approve the offender to be paid at the same rate as the previous job assignment and the rate of compensation shall not be automatically adjusted to the lowest pay rate of the new job assignment.

a. Grandfather Clause: Offenders earning incentive pay at any rate, prior to the effective date of this regulation, shall continue to earn at these rates. If the offender is reassigned to a new job or vacates the job for any reason and it has been determined the rate of pay for the job that he is leaving should be lower, the next offender to fill that position will receive the adjusted lower rate.

4. An offender may receive a raise in his hourly pay rate of no greater than \$0.04 per hour on an annual basis unless specifically authorized by mutual agreement of the director of prison enterprises and the warden of the respective institution, except as provided in sections D. 12., 13., 14., 15. and 16. below.

5. No offender shall earn more than 80 hours in a two-week period unless specifically authorized by mutual agreement of the director of prison enterprises and the warden of the respective institution.

a. Exception: Offenders assigned to job duties at the governor's mansion will not be limited to 80 hours bi-weekly.

6. Any offender who has his incentive pay forfeited as a disciplinary sanction shall return to the "Introductory Pay Level" of two cents per hour for a six month period upon reinstatement of his right to earn incentive pay. At the end of the six month period, the offender's pay will be automatically adjusted to the lowest pay rate for the assigned job.

7. A series of pay ranges and a standardized list of job titles shall be established by the director of prison enterprises and approved by the secretary or designee. The institutions shall be assigned limits on the total amount of incentive wages paid in certain pay ranges. These limits shall be derived on a percentage basis determined by the total hours worked by offenders who are eligible to earn incentive pay at each institution and shall be approved by the director of prison enterprises and the secretary or designee. Prison enterprises shall issue reports detailing each institution's status with regard to their limits on a quarterly basis. Offender banking shall monitor the assigned limits to ensure that the institutions remain within their limits and report discrepancies to the chief of operations, the appropriate regional warden, the director of prison enterprises and the warden of the institution.

a. The regional wardens shall work closely with the director of prison enterprises to ensure that any institution that exceeds the established limits is brought back into compliance in an expeditious manner.

b. Exception: Offenders who work in prison enterprises job titles will not affect an institution's pay range percentage limits.

8. Incentive wages shall not be paid for extra duty assignments that are imposed as sanctions through the offender disciplinary process.

9. All offenders classified in limited duty status and who are eligible to earn incentive wages shall earn at a rate of no more than \$0.04 per hour. This excludes offenders classified as regular duty with restrictions or those with a temporary limited duty status.

10. All offenders classified in working cellblocks and maximum custody field lines who are eligible to earn incentive wages shall earn at the rate of \$0.02 per hour.

11. All offenders assigned to educational or vocational programs who are eligible to earn incentive wages shall be paid at the rate of \$0.04 per hour.

a. Exception: Due to the importance of the New Orleans Baptist Theological Seminary program and its positive impact on the department, offenders enrolled in this program shall earn incentive wages at the following rates:

- i. Freshmen: \$0.14 per hour
- ii. Sophomores: \$0.16 per hour
- iii. Juniors: \$0.18 per hour
- iv. Seniors: \$0.20 per hour

b. Upon completion of any educational or vocational program, the offender may, upon request and at the discretion of the warden and based upon availability, return to the same job at the same rate of pay he held prior to enrollment in the program.

12. Offenders assigned to prison enterprises industrial, agricultural, service or other prison enterprises jobs may be compensated at a rate up to \$0.40 per hour. The pay range for these jobs shall be established by the director of prison enterprises and approved by the secretary or designee.

13. Offender tutors who achieve certification from the Corrections Education Association (CEA) or an NCCER or other industry based certification may be paid, on a graduating scale, up to \$1.00 per hour while working as a tutor in the area of certification. Certified tutors may earn \$0.75 per hour during the first 12 months after certification and may receive an annual raise of ten cents per hour, up to a maximum of \$1.00 per hour.

14. In accordance with established procedures, section D.4. offenders who are participating in the American Sign Language Interpreting Program shall earn incentive wages at the following rates:

- a. Sign Language Student I: \$0.20 per hour
- b. Sign Language Interpreter Student/Tutor: \$0.50 per hour
- c. Sign Language Interpreter/Certified Tutor: \$0.75 per hour-may be increased to a maximum of \$1.00 per hour

15. In accordance with established procedures, offenders working as a mentor/tutor or minister/tutor shall earn incentive wages at the following rates:

- a. Lead Certified Mentor/Tutor: \$0.75 per hour
- b. Certified Mentor/Tutor: \$0.65 per hour
- c. Peer Minister/Tutor: \$0.50 per hour
- d. Mentor/Tutor: \$0.50 per hour

16. Offenders who are assigned to work as counsel substitutes shall be paid in accordance with their education and years of legal experience. Incentive wages shall be earned at the following rates:

- a. Legal Worker 1 \$0.25 per hour
 - i. (Must be enrolled in paralegal classes or have less than five years legal work experience)
- b. Legal Worker 2 \$0.50 per hour

i. (Must have attained paralegal certificate or degree and have less than three years legal work experience OR have five years legal work experience and no paralegal certificate or degree)

c. Legal Worker 3 \$0.80 per hour

i. (Must have attained paralegal certificate or degree and have a minimum of three years legal work experience OR have 10 years legal work experience and no paralegal certificate or degree)

d. Counsel substitutes may receive an annual raise of five cents per hour, up to a maximum of \$1.00 per hour.

17. Offenders who are eligible to earn incentive wages shall be paid only for actual hours worked in their job assignment. Offenders shall not be paid for time spent away from their job assignment due to circumstances such as holidays, callouts, duty status, weather, illness, etc.

18. For the purpose of this regulation, income earned from a Private Sector/Prison Industry Enhancement (PS/PIE) program or a work release program is not "incentive pay." Therefore, offenders employed in any of these programs may receive good time in accordance with the law. The director of prison enterprises shall establish record-keeping procedures relating to wages earned by offenders employed in a PS/PIE program that include all mandatory deductions from offender wages, other deductions such as child support or garnishment and the distribution of net offender wages to offender banking.

E. Sources of Funding:

1. The division of prison enterprises shall pay all incentive wages.

2. Offenders who are employed in a certified PS/PIE program shall be paid by the private business that employs them or by prison enterprises depending upon the type of PS/PIE program that is in operation, in accordance with the terms stated in the employment agreement.

3. Offenders who are participating in a transitional work program shall be paid by the private business that employs them, in accordance with the terms outlined in the employment agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1927 (September 2008), amended LR 36:531 (March 2010), LR 38:1253 (May 2012), LR 40:2600 (December 2014), LR

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

Date

James M. Le Blanc
Secretary